

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3449 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgment?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

NIRMALABEN ALIAS NIMU KANUBHAI CHATURBHAI RAJPUT

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for the Petitioner.
MR KAMLESH KACHHAVAH for Petitioner No. 1
Mr.A.Y. Kogje, Assistant GOVERNMENT PLEADER,
for Respondent No. 1-3
RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/06/2004

ORAL JUDGEMENT

The petitioner is a lady detenue, who is detained
under the provisions of the Gujarat Prevention of

Anti-social Activities Act, 1985 ("PASA", for short). The order of detention is dated 11.12.2003, along with which the grounds of detention are also served upon the petitioner. The said grounds are at Annexure 'B', page 16. In the aforesaid grounds, there is a reference about four criminal cases pending against the petitioner. All these cases are under the Bombay Prohibition Act. The Detaining Authority, after having been satisfied about the activities of the petitioner, has detained the petitioner under PASA. The petitioner was also supplied necessary documents, along with the detention order.

In connection with the Prohibition Case, even the statement of the petitioner is also recorded, which is finding a place at page 8 in the compilation, wherein she has stated that she is a very poor lady and her husband is not keeping good health and for maintaining her family, she is required to sell liquor. Of course, it has nothing to do with the present petition as the authority has recorded subjective satisfaction in the order. Learned Advocate for the petitioner, however, submitted that the last incident in question is dated 18.10.2003 and the detention order was passed almost after two months and really, if the activities of the petitioner were so dangerous, it was not necessary to wait, especially when she was arrested and criminal case was pending against her before the criminal Court. The learned Advocate for the petitioner submitted that the petitioner is a lady detenu and she is victim of circumstances as her husband was undergoing medical treatment. However, so far as the aforesaid aspect is concerned, this cannot be examined by this Court, as, ultimately, it is a matter of subjective satisfaction of the authority.

As regards delay in passing the detention order, learned Advocate for the petitioner relied on the decision of this Court in *Elesh Nandubhai Patel v. Commissioner of Police*, 1997(1) GLH 381, wherein this Court has observed as under in paragraph 21 :-

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21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course

true that the detaining authority relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S. Ramamurthy reported in 1993(2) Suppl SCC 61.

... .."

Mr.Kogje, leaned AGP, however, submitted that after the incident in question, the Sponsoring Authority started recording statements of some witnesses and, ultimately, the detaining authority verified the statements on 10.12.2003 and, thereafter, straight away, the detention order was passed on the next day. He, however, submitted that there is no reasonable explanation for the delay in connection with recording of the statements by the Sponsoring Authority and verification by the Detaining Authority.

Considering the fact that the last incident took place on 18.10.2003, yet, there is a delay of practically two months in passing the detention order and considering the fact that even after the sponsoring authority recorded the statement, there is also considerable delay even in verification of such statements and considering the decision of this Court, referred to above, only on the aforesaid ground of delay, the order of detention is required to be set aside and it is accordingly set aside. It is clarified that considering the facts of this case and the non-satisfactory explanation of the delay for the intervening period, the present order is required to be passed.

Under the circumstances, the petition is allowed.
The order of detention is quashed and set aside. It is ordered that the detenue be released forthwith unless she is required in connection with any other case. Rule is made absolute accordingly.

21st June, 2004 (P.B. Majmudar, J.)

(apj)